

**INTERNATIONAL COURT OF JUSTICE**

**YEAR 2012**

**20 July 2012**

**2012  
20 July  
General List  
No. 144**

**QUESTIONS RELATING TO THE OBLIGATION TO PROSECUTE  
OR EXTRADITE**

**(BELGIUM *v.* SENEGAL)**

**III. ADMISSIBILITY OF BELGIUM'S CLAIMS**

64. Senegal objects to the admissibility of Belgium's claims. It maintains that "Belgium is not entitled to invoke the international responsibility of Senegal for the alleged breach of its obligation to submit the H[issène] Habré case to its competent authorities for the purpose of prosecution, unless it extradites him". In particular, Senegal contends that none of the alleged victims of the acts said to be attributable to Mr. Habré was of Belgian nationality at the time when the acts were committed.

65. Belgium does not dispute the contention that none of the alleged victims was of Belgian nationality at the time of the alleged offences. However, it noted in its Application that “[a]s the present jurisdiction of the Belgian courts is based on the complaint filed by a Belgian national of Chadian origin, the Belgian courts intend to exercise passive personal jurisdiction”. In its Application Belgium requested the Court to adjudge and declare that its claim was admissible. In the oral proceedings, Belgium also claimed to be in a “particular position” since “it has availed itself of its right under Article 5 to exercise its jurisdiction and to request extradition”. Moreover, Belgium argued that “[u]nder the Convention, every State party, irrespective of the nationality of the victims, is entitled to claim performance of the obligation concerned, and, therefore, can invoke the responsibility resulting from the failure to perform”.

66. The divergence of views between the Parties concerning Belgium’s entitlement to bring its claims against Senegal before the Court with regard to the application of the Convention in the case of Mr. Habré raises the issue of Belgium’s standing. For that purpose, Belgium based its claims not only on its status as a party to the Convention but also on the existence of a special interest that would distinguish Belgium from the other parties to the Convention and give it a specific entitlement in the case of Mr. Habré.

67. The Court will first consider whether being a party to the Convention is sufficient for a State to be entitled to bring a claim to the Court concerning the cessation of alleged violations by another State party of its obligations under that instrument.

68. As stated in its Preamble, the object and purpose of the Convention is “to make more effective the struggle against torture . . . throughout the world”. The States parties to the Convention have a common interest to ensure, in view of their shared values, that acts of torture are prevented and that, if they occur, their authors do not enjoy impunity. The obligations of a State party to conduct a preliminary inquiry into the facts and to submit the case to its competent authorities for prosecution are triggered by the presence of the alleged offender in its territory, regardless of the nationality of the offender or the victims, or of the place where the alleged offences occurred. All the other States parties have a common interest in compliance with these obligations by the State in whose territory the alleged offender is present. That common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention. All the States parties “have a legal interest” in the protection of the rights involved (*Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 32, para. 33). These obligations may be defined as “obligations *erga omnes partes*” in the sense that each State party has an interest in compliance with them in any given case. In this respect, the relevant provisions of the Convention against Torture are similar to those of the Convention on the Prevention and Punishment of the Crime of Genocide, with regard to which the Court observed that

“In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d’être* of the Convention.” (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.)

69. The common interest in compliance with the relevant obligations under the Convention against Torture implies the entitlement of each State party to the Convention to make a claim concerning the cessation of an alleged breach by another State party. If a special interest were required for that purpose, in many cases no State would be in the position to make such a claim. It follows that any State party to the Convention may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, such as those under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention, and to bring that failure to an end.

70. For these reasons, the Court concludes that Belgium, as a State party to the Convention against Torture, has standing to invoke the responsibility of Senegal for the alleged breaches of its obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention in the present proceedings. Therefore, the claims of Belgium based on these provisions are admissible.

As a consequence, there is no need for the Court to pronounce on whether Belgium also has a special interest with respect to Senegal's compliance with the relevant provisions of the Convention in the case of Mr. Habré.

#### IV. THE ALLEGED VIOLATIONS OF THE CONVENTION AGAINST TORTURE

71. In its Application instituting proceedings, Belgium requested the Court to adjudge and declare that Senegal is obliged to bring criminal proceedings against Mr. Habré and, failing that, to extradite him to Belgium. In its final submissions, it requested the Court to adjudge and declare that Senegal breached and continues to breach its obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention by failing to bring criminal proceedings against Mr. Habré, unless it extradites him.

72. Belgium has pointed out during the proceedings that the obligations deriving from Article 5, paragraph 2, Article 6, paragraph 2, and Article 7, paragraph 1, are closely linked with each other in the context of achieving the object and purpose of the Convention, which according to its Preamble is "to make more effective the struggle against torture". Hence, incorporating the appropriate legislation into domestic law (Article 5, paragraph 2) would allow the State in whose territory a suspect is present immediately to make a preliminary inquiry into the facts (Article 6, paragraph 2), a necessary step in order to enable that State, with knowledge of the facts, to submit the case to its competent authorities for the purpose of prosecution (Article 7, paragraph 1).

73. Senegal contests Belgium's allegations and considers that it has not breached any provision of the Convention against Torture. In its view, the Convention breaks down the *aut dedere aut judicare* obligation into a series of actions which a State should take. Senegal maintains that the measures it has taken hitherto show that it has complied with its international commitments. First, Senegal asserts that it has resolved not to extradite Mr. Habré but to organize his trial and to try him. It maintains that it adopted constitutional and legislative reforms in 2007-2008, in accordance with Article 5 of the Convention, to enable it to hold a fair and equitable trial of the alleged perpetrator of the crimes in question reasonably quickly. It further states that it

122. For these reasons,

THE COURT,

(1) Unanimously,

*Finds* that it has jurisdiction to entertain the dispute between the Parties concerning the interpretation and application of Article 6, paragraph 2, and Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, which the Kingdom of Belgium submitted to the Court in its Application filed in the Registry on 19 February 2009;

(2) By fourteen votes to two,

*Finds* that it has no jurisdiction to entertain the claims of the Kingdom of Belgium relating to alleged breaches, by the Republic of Senegal, of obligations under customary international law;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde; *Judge ad hoc* Kirsch;

AGAINST: *Judge* Abraham; *Judge ad hoc* Sur;

(3) By fourteen votes to two,

*Finds* that the claims of the Kingdom of Belgium based on Article 6, paragraph 2, and Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 are admissible;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Donoghue, Gaja, Sebutinde; *Judge ad hoc* Kirsch;

AGAINST: *Judge* Xue; *Judge ad hoc* Sur;

(4) By fourteen votes to two,

*Finds* that the Republic of Senegal, by failing to make immediately a preliminary inquiry into the facts relating to the crimes allegedly committed by Mr. Hissène Habré, has breached its obligation under Article 6, paragraph 2, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Greenwood, Donoghue, Gaja, Sebutinde; *Judges ad hoc* Sur, Kirsch;

AGAINST: *Judges* Yusuf, Xue;

(5) By fourteen votes to two,

*Finds* that the Republic of Senegal, by failing to submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution, has breached its obligation under Article 7, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 ;

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Donoghue, Gaja, Sebutinde; *Judge ad hoc* Kirsch;

AGAINST: *Judge* Xue; *Judge ad hoc* Sur;

(6) Unanimously,

*Finds* that the Republic of Senegal must, without further delay, submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution, if it does not extradite him.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twentieth day of July, two thousand and twelve, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Kingdom of Belgium and the Government of the Republic of Senegal, respectively.

*(Signed)* Peter TOMKA,  
President.

*(Signed)* Philippe COUVREUR,  
Registrar.

Judge OWADA appends a declaration to the Judgment of the Court; Judges ABRAHAM, SKOTNIKOV, CANÇADO TRINDADE and YUSUF append separate opinions to the Judgment of the Court; Judge XUE appends a dissenting opinion to the Judgment of the Court; Judge DONOGHUE appends a declaration to the Judgment of the Court; Judge SEBUTINDE appends a separate opinion to the Judgment of the Court; Judge *ad hoc* SUR appends a dissenting opinion to the Judgment of the Court.

*(Initialed)* P. T.

*(Initialed)* Ph. C.

---